

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

MICHAEL DEMIL, an individual,

Plaintiff/Counter-Defendant,

HENRI JAMES DEMIL, and individual, SARAH  
MAE DEMIL, an individual, HANNAH RENE  
DEMIL, an individual and SAVANNAH LYNN  
DEMIL, an individual

Plaintiffs,

vs.

Case No. 2012-889-CK

RMD HOLDINGS, LTD, a Michigan corporation  
and ROBERT E. DEMIL, an individual,

Defendants/Counter-Plaintiffs.

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OPINION AND ORDER

Plaintiff Michael Demil (“Plaintiff”) has filed a motion for partial reconsideration of the portion Court’s November 24, 2014 Opinion and Order denying, in part, his motion for summary disposition of Defendant Robert Demil’s (“Defendant”) and RMD Holdings, Ltd.’s (“RMD”) breach of fiduciary duty claims against him.

In the interests of judicial economy the factual and procedural statements set forth in the Court’s November 24, 2014 Opinion and Order are herein incorporated.

*Standard of Review*

Motions for reconsideration must be filed within 21 days of the challenged decision. MCR 2.119(F)(1). The moving party must demonstrate a palpable error by which the Court and the parties have been misled and show that a different disposition of the motion must result from correction of the error. MCR 2.119(F)(3). A motion for reconsideration which merely presents

the same issue ruled upon by the Court, either expressly or by reasonable implication, will not be granted. *Id.* The purpose of MCR 2.119(F)(3) is to allow a trial court to immediately correct any obvious mistakes it may have made in ruling on a motion, which would otherwise be subject to correction on appeal but at a much greater expense to the parties. *Bers v Bers*, 161 Mich App 457, 462; 411 NW2d 732 (1987). The grant or denial of a motion for reconsideration is a matter within the discretion of the trial court. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

### *Arguments and Analysis*

In support of that motion, Plaintiff contends that Defendant's claim contained within paragraph 4(j) of RMD's counterclaim should be dismissed to the extent that such claim is predicated upon actions Plaintiff took as an RMD Project Manager, to the extent that such claim is predicated upon actions which are time-barred, and to the extent such claim is predicated upon the DOJ's claims against RMD and/or Plaintiff which have dismissed in this lawsuit as addressed in the August 11, 2014 Stipulated Order ("Stipulated Order").

While Plaintiff's initial motion for partial summary disposition sought summary disposition of many of the bases for Defendants' breach of fiduciary duty claims, paragraph 4(j) was not addressed in the motion. Based on Plaintiff's failure to address the merits of paragraph 4(j), the Court declined to entertain that paragraph in connection with its November 24, 2014 Opinion and Order. While Plaintiff may wish to seek summary disposition as to subsection (j), the Court is convinced that a separate motion for summary disposition, rather than its instant motion, is the proper procedure by which to seek its requested relief. Accordingly, the Court is convinced that Plaintiff's motion must be denied to the extent that it relates to section 4(j) of RMD's counter-claim.

In his motion, Plaintiff also requests that the Court clarify its November 24, 2014 Opinion and Order by holding that section 4(d) of RMD's counterclaim is dismissed to the extent that such claim is predicated upon actions which are time-barred, and to the extent that such claim is predicated upon the DOJ's claims against RMD and/or Plaintiff, which have been dismissed pursuant to the Stipulated Order. However, once again Plaintiff seeks the Court to hold that summary disposition is appropriate as to portions of RMD's counter-claim that were not specifically addressed in Plaintiff's original motion. While the Court is aware that the grounds upon which Plaintiff now seeks summary disposition did not exist at the time he filed his original motion, the Court is convinced that Plaintiff should be required to file a separate motion for summary disposition for claims he contends are barred by the Stipulated Order, or claims that he claims are time-barred, but that were not addressed in the original motion. Consequently, Plaintiff's motion must be denied.

#### *Conclusion*

For the reasons set forth above, Plaintiff's motions for partial reconsideration of the Court's November 24, 2014 Opinion and Order is DENIED.

Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

/s/ John C. Foster  
JOHN C. FOSTER, Circuit Judge

Dated: January 13, 2015

JCF/sr

Cc: *via e-mail only*

Benjamin J. Aloia, Attorney at Law, [aloia@aloiaandassociates.com](mailto:aloia@aloiaandassociates.com)

Edward J. Hood, Attorney at Law, [ehood@clarkhill.com](mailto:ehood@clarkhill.com)

Theresa Lloyd, Attorney at Law, [tlloyd@plunkettcooney.com](mailto:tlloyd@plunkettcooney.com)

Rogue Tyson, Attorney at Law, [rtyson@nationwidecos.com](mailto:rtyson@nationwidecos.com)